

Litigant financial expert in disputes: a new profession?

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In high-stakes litigation, the litigants may call upon a financial expert who works with their attorneys. In addition to mastery of the economic and financial aspects of litigation, this involvement can back up a position technically and provide crucial support during critical phases, such as testimony.

Today, the litigant financial expert is more often a firm than an individual; it must be able to line up experienced teams with thorough technical knowledge, while demonstrating its teaching ability and ensuring the independence its findings.

In litigation, judges or arbitrators sometimes appoint a financial expert. What is the interest of either party in appointing its own expert? A financial expert, called independent, is appointed by the court when the litigation runs into an economic, financial and/or accounting technical point, requiring the involvement of numbers specialists in addition to legal specialists. Thus, the financial expert particularly has the skill of assessing damages incurred: the respective amounts of the loss sustained and the lost profit. It may also assess a financial position at the source of a dispute, reconstitute a financial position from different data ("restoration"), or even confirm or invalidate allegations related to accounting or finance of one of the two Parties, etc. Moreover, the plaintiff or the defendant may often, on the advice of its attorneys, involve its own financial expert. There are multiple interests in doing so. First, the financial expert can provide the attorneys with economic and financial clarification on certain issues discussed between the parties. It can then be able to produce a technical, professional, detailed report, sometimes before the appointment of an expert by the court. In some cases, this report can be used by the court, which may consider it sufficient and therefore spare itself the trouble of appointing an expert.

The use of the expert also makes it possible to understand and possibly counter the technical arguments put forward by the opposing party and provide the expert appointed by the court with the technical elements needed to produce its report; in fact, experience has shown that experts appointed by courts often lack the time and means for investigation. The litigant expert can ask the court-appointed expert the relevant questions and possibly request additional necessary work. Lastly, its involvement can ensure complete control over all financial arguments exchanged during the procedure and the ability to support its position by producing written or oral testimony. Who are litigant financial experts? In the Anglo-Saxon legal environment, several highly structured consulting firms, some with hundreds of specialised consultants, are involved as a litigant financial expert.

Of course, this follows the practice of law in these countries: general proceeding of trials and arbitrations, discovery and cross examination procedures, which require intense preparation phases and the presence of experts, often many, alongside the attorneys. In France, this profession is new, and few firms are able to work effectively in this field. In our opinion, a litigant financial expert, for high value-added involvement, must be able to produce work that is factual and precise: an honest approach and reasoning, referenced and verifiable data. It must also possess strong skills in all three economic, financial, and accounting fields.

Financial valuation, reconstitution of financial positions based on assumptions, scenario establishment, financial aggregate calculation, and other work require extensive knowledge in all three disciplines. It must be able to prepare for battle experienced teams, sometimes numerous, who have mastered the techniques of investigation and auditing and are able to present organised, structured information. It must also have true teaching abilities in order to clearly and convincingly explain to attorneys and judges the sometimes very technical

positions and arguments (e.g. calculation of EBITDA, determination of a discount rate, etc.). Lastly, it must be able to assist its client and the attorneys until the end of the procedure, providing, if necessary, its written or oral testimony.

For this, the consulting firm involved must work with the greatest independence and also not be limited by restrictive internal standards. Can you give examples of Accuracy's involvement as a litigant financial expert? We are very regularly involved as a litigant financial expert. Over the past twelve months, we have particularly worked alongside law firms: for a bank charged with improper support (presentation of economic, financial, and accounting arguments); for a listed group as part of an international arbitration concerning breach of contractual commitments; for a listed group as part of wrongful termination of negotiations (detailed, thorough valuation of the damages incurred); for a listed group in the implementation of a liability guarantee; for a group as part of intellectual property violation proceedings. We will have the opportunity to develop these examples as case studies in future columns.

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